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In the Supreme Court of the United States

OCTOBER TERM, 1928

No. ——

UNITED STATES OF AMERICA, PETITIONER

v.

CALIFORNIA CO-OPERATIVE CANNERIES

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF

The Solicitor General, on behalf of United States of America, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia entered in the above case May 18, 1928 (R. 321), denying a motion by the United States to vacate and set aside as null and void, for lack of jurisdiction, its decision and judgment thereinbefore rendered June 2, 1924, and its mandate thereon of June 20, 1924.

QUESTION PRESENTED

The question presented in this case is whether the Court of Appeals of the District of Columbia had jurisdiction to entertain an appeal from a final decree of the Supreme Court of the District of

Columbia, entered in a suit in equity brought by the United States under the Sherman Antitrust Act, denying the application of a third party for leave to intervene in such suit.

STATUTES INVOLVED

Section 226, District of Columbia Code, which confers general appellate jurisdiction upon the Court of Appeals of the District of Columbia, provides:

> Any party aggrieved by any final order, judgment, or decree of the supreme court of the District of Columbia, or of any justice thereof, including any final order or judgment in any case heard on appeal from a justice of the peace, may appeal therefrom to the said court of appeals; and upon such appeal the court of appeals shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just, except as provided in the following sections. Appeals shall also be allowed to said court of appeals from all interlocutory orders of the supreme court of the District of Columbia, or by any justice thereof, whereby the possession of property is changed or affected, such as orders for the appointment of receivers, granting injunctions, dissolving writs of attachment, and the like; and also from any other interlocutory order, in the discretion of the said court of appeals, whenever it is made to appear to said court upon petition that it will be in the interest of justice to allow such appeal.

But Section 2 of the Expediting Act of February 11, 1903, c. 544, 32 Stat. 823 (see U. S. C. Title 15, Sec. 29), which governs appeals from final decrees in suits in equity brought by the Government under Federal antitrust laws, provides:

> That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said Acts [enumerated in Sec. 1, and including the Sherman Act], wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof * * *.

STATEMENT OF CASE

In 1920 the United States brought suit in equity in the Supreme Court of the District of Columbia under the Sherman Antitrust Act of 1890, c. 647, 26 Stat. 209, against the five principal meat packers and their subsidiaries, charging them with an attempt to monopolize the nation's food supply, and alleging that, as a means to that end, they were engaged in the business of handling wholesale groceries, canned fruits, and other commodities unrelated to the meat-packing industry. (R. 1–17.) The defendants filed answers (R. 18–115), but did not stand trial on any issues of fact therein presented. They consented to the entry of an injunction decree against them, restraining them, among other things, from handling these unrelated com-

modities, including canned fruits. (R. 118–131.) The validity of this decree has recently been sustained by this Court. (*Swift & Co.* v. *United States*, No. 181, Oct. Term, 1927, decided March 19, 1928.)

In 1922 the California Cooperative Canneries filed in the same court their motion for leave to intervene in this suit (R. 147), accompanied by their intervening petition (R. 147–218). In this petition the Canneries alleged a contract with Armour and Company, one of the defendants, under which that company was purchasing annually a large portion of their output of canned fruits (R. 148–152); and that as a result of the consent decree Armour & Company had been compelled to discontinue the performance of this contract. This, the Canneries claimed, constituted a deprivation of their contract rights without due process of law. In its final decree of May 8, 1923 (R. 304), the court denied this application and the Canneries appealed to the Court of Appeals of the District of Columbia.

That court, on June 2, 1924, rendered its decision (299 Fed. 908; R. 308) and judgment (R. 315), and on June 20 following its mandate thereon (R. 315), reversing the decision of the Supreme Court below, and ordering "that the appellant be allowed to intervene and such further proceedings thereupon be had as are necessary to determine the issue raised by the appellant's petition." It is this judgment and mandate that the United States now seeks to have vacated and set

aside on the ground that the appeal therein determined was beyond the jurisdiction of that court.

In the proceedings which followed in the Supreme Court of the District of Columbia pursuant to the Court of Appeals' mandate, the Canneries, and later the Swift and Armour groups of defendants, filed motions to vacate the consent decree of 1920 as null and void. Without hearing any evidence upon the issues raised by the Canneries' petition in intervention and the Government's answer thereto, the court, by its order of May 1, 1925, denied the Swift and Armour motions, but granted the Canneries' motion so far as to suspend the operation of the decree as a whole pending a hearing on the merits. (See Transcript of Record in *Swift & Co.* v. *United States*, No. 181, Oct. Term, 1927, pp. 313, 318, 322, 334, 341.)

The Swift and Armour defendants took appeals to the Court of Appeals of the District of Columbia. These appeals finally came to this Court and were determined by its decision of March 19, 1928, *supra*, sustaining the Supreme Court below and the validity of the consent decree of 1920, and holding that the Court of Appeals was without jurisdiction over the Swift and Armour appeals.

The United States then filed motion in the Court of Appeals (R. 317) to set aside for lack of jurisdiction its judgment of June 2 and mandate of June 20, 1924, above referred to, on the ground that the appeal therein determined was likewise removed from its jurisdiction by the Expediting Act of

1903. This motion was denied by the court without opinion, May 18, 1928 (R. 321), and it is this decision which the United States now seeks to bring before this Court for its review.

SPECIFICATION OF ERRORS

1. The Court of Appeals erred in denying the motion of the United States to vacate its judgment and mandate of 1924 as without jurisdiction.

2. The Court of Appeals erred in holding that it had jurisdiction over the appeal of the California Cooperative Canneries from the order of the Supreme Court of the District of Columbia denying the Canneries' application for leave to intervene.

3. The Court of Appeals erred in refusing to hold that said appeal of the California Cooperative Canneries was within the provisions of Section 2 of the Expediting Act of 1903.

THE REASONS FOR GRANTING THE WRIT

1. The question is one of general importance. Consent decrees have been an effective means for the enforcement of Federal antitrust laws. It is highly important that attempts to prevent their enforcement by the intervention of third parties should be quickly and expeditiously determined by this Court without protracted intermediate appellate procedure, and to that end that appeals from final decrees upon applications of intervention in antitrust suits should not be excluded, by construc-

tion, from the express provisions of the Expediting Act.

2. The question is one of substance relating to the construction of Section 2 of the Expediting Act of 1903, as applied to final decrees in antitrust suits upon applications to intervene.

3. In the determination of that question the Court of Appeals of the District of Columbia failed to give proper effect to the decision of this Court in *Swift & Co.* v. *United States,* No. 181, October Term, 1927, decided March 19, 1928.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Court of Appeals of the District of Columbia should be granted.

WILLIAM D. MITCHELL,
Solicitor General.

AUGUST, 1928.

BRIEF IN SUPPORT OF THE PETITION

OPINIONS BELOW

No opinion was filed by the Court of Appeals when denying the motion to vacate its former judgment.

JURISDICTION

The judgment of the Court of Appeals was entered May 18, 1928. (R. 321.) Jurisdiction of this Court is invoked under Sec. 240(a), Judicial Code, Act of February 13, 1925, c. 229, 43 Stat. 936, 938.

STATEMENT

A statement of the facts and of the statutes involved and of the errors relied on will be found in the petition.

ARGUMENT

I. The decision or judgment of any court rendered without jurisdiction is void.

Galpin v. *Page*, 18 Wall. 350, 373.

Elliott v. *Peirsol*, 1 Pet. 328, 340.

Shriver's Lessee v. *Lynn*, 2 How. 43, 60.

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Macfarland v. *Saunders*, 25 App. D. C. 438, 441.

It is immaterial that the void decree is that of an appellate court rather than a court of original jurisdiction. In *Hickey* v. *Stewart*, 3 How. 750, this Court declared void for lack of jurisdiction a judgment of the Supreme Court of the State of Mississippi. In *Ex Parte Crenshaw*, 15 Pet. 119, this Court set aside, for lack of jurisdiction over the parties, its own judgment and mandate rendered at a previous term on appeal from a United States Circuit Court, the appellee never having been served with citation on appeal.

II. It is the duty of the court which entered a void judgment to vacate and set it aside on motion or application by the party against whom it was rendered.

Ex Parte Crenshaw, supra.
United States v. *Rothstein*, 187 Fed. 268.
Mossew v. *United States*, 266 Fed. 18.
Morse v. *U. S. to the use of Hine*, 29 App. D. C. 433.
Crane v. *Barry*, 47 Ga. 476.
City of Olney v. *Harvey*, 50 Ill. 453.
Hervey & Co. v. *Edmunds*, 68 N. C. 243.
Mills & Co. v. *Dickson & Mills*, 6 Rich. Law (S. C.) 487.
Cooley's "Constitutional Limitations" 7th Ed., p. 576.
I Freeman on Judgments, 5th Ed., Sec. 273.
I Black on Judgments, 2nd Ed., Secs. 303, 318.

III. A decree denying an application for leave to intervene is final.

Stich v. *Dickinson*, 38 Cal. 608.
People v. *Pfeiffer*, 59 Cal. 89.
Henry v. *Travelers' Insurance Co.*, 16 Colo. 179.
Rollins v. *Rollins*, 76 N. C. 264.
Schlieder v. *Martinez*, 38 La. Ann. 847.
Harman v. *Barhydt*, 20 Neb. 625.
Bass et al. v. *Fontleroy*, 11 Tex. 698.

IV. When such a decree is entered in an anti-trust suit in equity brought by the United States, it

is within Section 2 of the Expediting Act, and can be appealed only to the Supreme Court of the United States. This is the result of the express language of Section 2, which refers to final decrees in such suits without qualification or discrimination.

It is immaterial that the decree does not finally dispose of the issues of the principal suit. *Swift & Co.* v. *United States*, No. 181, October Term, 1927, March 19, 1928. In that case the final decree in question passed only on certain jurisdictional questions concerning the earlier decrees which did dispose of the issues in the principal suit—questions which depended for their determination, not upon the statutory antitrust laws, but upon general principles of court jurisdiction. This Court held, nevertheless, that the Court of Appeals had no jurisdiction over the appeals from the final decree in question; and the effect of its decision is that no test can be read into the Expediting Act whereby part of the final decrees therein generally referred to can be excluded from its meaning. No adequate selection can be made on the basis of what the decree decides. The Act concerns appeals, and if any particular test of finality is to be used, it must be finality for purposes of appeal.

It is likewise immaterial that the decree appealed from was entered upon the application of an intervener. It was nevertheless a final decree in the principal suit. The public interest is bound up

with the principal suit, and it was the purpose of the Expediting Act to advance that public interest by enabling the earlier final determination of the suit and the effective enforcement of its decrees. Anything that interferes with that object is within the spirit of the Act, and, if also within its letter, should not be excluded from its meaning. It will certainly interfere with the expeditious progress of antitrust litigation if third party interveners may stay its course while dragging through intermediate appellate courts the final decrees entered in determination of their rights. For if such decrees are not within the Expediting Act, there is no law requiring priority to be given to their determination.

Continental Insurance Co. v. *United States*, 259 U. S. 156, is in point. Certain insurance companies had come in as interveners to protect their interests as minority stockholders in the dissolution of the Reading Company in execution of a mandate of the Supreme Court of the United States in *United States* v. *Reading Company*, 253 U. S. 26. The lower court entered a decree adjudicating the rights of these interveners. They took appeals to the Supreme Court of the United States. In the *Insurance Company case, supra*, these appeals were entertained and determined, the court expressly recognizing at the beginning of its opinion (p. 165) that they came up under the Expediting Act of 1903.

V. Substantial relief to the Government depends upon the granting of this petition and the reversal of the Court of Appeals' judgment of May 18, 1928.

The decree of the Supreme Court of the District of Columbia of May 8, 1923, denying the Canneries' application to intervene was final. (See paragraph III, *supra*.) A court has no power to alter or set aside its final judgments or decrees after the expiration of the term at which they were entered, except for jurisdictional invalidity and certain formal defects not here involved. *Bank of United States* v. *Moss*, 6 How. 31; *Ex Parte Sibbald* v. *United States*, 12 Pet. 488; *Bronson* v. *Schulten*, 104 U. S. 410; *Phillips* v. *Negley*, 117 U. S. 665; *United States* v. *Mayer*, 235 U. S. 55. By the lower court's decree of May 8, 1923, therefore, its denial of the Canneries' right to intervene in this suit became *res judicata;* and until the receipt of the Court of Appeals' mandate of June 20, 1924, the lower court had no jurisdiction or authority to alter or set aside that decree or to take any other proceedings not in harmony with it.

The Court of Appeals' mandate directed further proceedings in the Supreme Court below to determine the issues raised in the Canneries' intervention. In the course of those proceedings the latter court, by its order of May 1, 1925, suspended the consent decree of 1920, pending full hearing on these issues. As above explained, these proceedings rested solely upon the authority of the Court of Appeals' judgment and mandate; and if the latter are invalid for lack of jurisdiction, the order of suspension must fall with them. Thus, the decree

heretofore held valid by this Court will then be restored to operative effect and rendered enforceable by the Government and by the courts.

CONCLUSION

It is respectfully submitted that because of the importance of the question involved the writ should issue.

WILLIAM D. MITCHELL,
Solicitor General.
WILLIAM J. DONOVAN,
Assistant to the Attorney General.
H. B. TEEGARDEN,
Special Assistant to the Attorney General.

AUGUST, 1928.

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